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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1024.

THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY OF JEFFERSON, STATE OF KANSAS, PLAINTIFF IN ERROR,

vs.

HENRY STRONG.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED DECEMBER 24, 1877.

SUPREME COURT OF THE UNITED STATES.

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1 In the circuit court of the United States for the district of Kansas.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant. } 1548.

Be it remembered that on this day, to wit, April 25, 1876, the plaintiff, by his attorney, filed in the clerk's office of said court his petition, precipe, and security for costs in said entitled action, which said petition, precipe, and security for costs, with the endorsements thereon, are in the words and figures following, to wit:

Petition.

In the circuit court of the United States within and for the district of Kansas.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant. } Petition.

The plaintiff, Henry Strong, a resident of the city of Chicago, in the State of Illinois, and a citizen of the State of Illinois, complains of the defendant, the Township of Rock Creek, in the county of Jefferson, State of Kansas, a municipal corporation organized and doing business under the laws of the State of Kansas, and a citizen of the State of Kansas, and for causes of action, says:

2 For a first cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 3," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer thereof, thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1874, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due April 15th, 1874 [$35.

3 "The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or

bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 3, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon, by its terms, became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof: that when said coupon, by its terms, became due and payable, the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place: that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the 15th day of April, A. D. 1874.

And for a 2nd cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and or-
4 ganized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 3," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A", and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer thereof, thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1874, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"[$35.] Due October 15th, 1874. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 3, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

5 That before said coupon, by its terms, became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder ther-

of; that when said coupon, by its terms, became due and payable, the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1874.

And for a third cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson, and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby for value received it promised thirty years from date to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars, at the Fourth National Bank, in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. 3, a copy
6 of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition.

That on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date upon the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka and Santa Fé Railroad Company, or bearer thereof, thirty-five dollars, at the Fourth National Bank in the city of New York, on the fifteenth day of April, 1875, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35. Due April 15th, 1875. $35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer, thirty-five dollars, semi-annual interest railroad and depot bond No. 3, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond together with said coupon came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned, and payment demanded but refused,
7 because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims with interest from the fifteenth day of April, A. D. 1875.

And for a 4th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson

and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby, for value received, it promised, thirty years from date, to pay to the Atchison, Topeka and Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars, at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. 3, a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made part of this petition. That on the seventeenth day of October, A. D. 1872, said bond was duly registered in the
8 office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka and Santa Fé Railroad Company, or bearer thereof, thirty five dollars, at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1875, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due October 15th, 1875. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fe Railroad Company, or bearer, thirty-five dollars, semi-annual interest railroad and depot bond No. 3, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Clerk.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond together with said coupon came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, not-
9 withstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims with interest from the fifteenth day of October, A. D. 1875.

And for a 5th cause of action says: That on the tenth day of September, 1872, the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka and Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars, at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. 3, a copy of which said bond, together with the certificate of the auditor of state of the registration

thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition.

That on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of the State; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek,
10 whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer thereof, thirty-five dollars, at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1876, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35. | Due April 15th, 1876. | $35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer, thirty-five dollars, semi-annual interest, railroad and depot bond No. 3, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims with interest from the fifteenth day of April, A. D. 1876.

And for a sixth cause of action says: That on the 10th day
11 of September, 1872, at the township of Rock Creek, in the county of Jefferson, and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby, for value received, it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 14," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison Topeka & Santa Fé Railroad Company, or bearer thereof, thirty-five dollars at said Fourth National
Bank in the city of New York, on the fifteenth day of April, 1874,
12 for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"35.] Due April 15th, 1874. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka and Santa Fé Railroad Company *or* bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 14, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded but refused, because said defendant had not, nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1874.

And for a 7th cause of action says: That on the tenth of September, 1872, at the township of Rock Creek, in the county of Jefferson,
13 and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby, for value received, it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fe Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 14," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fe Railroad Company, or bearer thereof, thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1874, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

14 "$35.] Due October 15th, 1874. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty five dollars, semi-annual interest railroad and depot bond No. 14, payable at the Fourth National Bank, city of New York, State of New York.

N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said

bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1874.

And for an 8th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson, and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby, for value received, it promised, thirty years from date, to pay to the Atchison, Topeka
15 & Santa Fe Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 14," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of State; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fe Railroad Company, or bearer thereof, thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1875, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due April 15th, 1875. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay the Atchison, Topeka & Santa Fe Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 14, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

16 That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1875.

And for a ninth cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 14," a copy of which said bond, together with the certificate of the auditor of
17 state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition: that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state: that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1875, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due October 15th, 1875. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fe Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 14, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor
18 did it ever have, funds at said place: that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1875.

And for a tenth cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers

coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 14," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the
19 auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Forth National Bank in the city of New York, on the fifteenth day of April, 1876, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due April 15th, 1876. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 14, payable at the Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable the said bond, together with said coupon, came to and for value became the property of the plaintiff, who, therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to
20 do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1876.

And for a 11th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 15," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place afore-
21 mentioned, made by said Township of Rock Creek, whereby

it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1874, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due April 15th, 1874. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, City of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable the said bond, together with said coupon, came to and for value became the property of said plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifday of April, A. D. 1874.

22 And for a 12th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and the State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 15," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1874, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due October 15th, 1874. [$35.

23 "The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars semi-annual interest railroad and depot bond

No. 15, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore, became and has ever since been, and still is, the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place: that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1874.

And for a 13th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka
24 and Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 15," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition: that on the seventeenth day of October, A. D. 1872 said bond was duly registered in the office of the auditor of state: that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by said township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1875, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35.] Due April 15th, 1875. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka, & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, city of New York, State of New York.

25 "N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became, and has ever since been, and still is, the true and lawful owner and holder thereof: that when said

coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1875.

And for a 14th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the
26 sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 15," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition; that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1875, for the interest then and there to be due on said bond, which coupon is in word and figures as follows:

"$35.] Due October 15th, 1875. $35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

27 That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded, but refused, because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1875.

And for a 15th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson

and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars, at the Fourth National Bank in the city of New York, in the State of New York, with interest at the
28 rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. 15, a copy of which said bond, together with the certificate of the auditor of State of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition. That on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by the said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty five dollars, at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1876, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35 | Due April 15, 1876. | $35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since
29 been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded, but refused, because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1876.

Wherefore the plaintiff prays judgment against the said defendant for the sum of five hundred and twenty-five dollars ($525.00), the amount due on said several causes of action aforesaid, with interest $105.00 from April 15th, 1874; with interest on $105.00 from October 15th, 1874; with interest on $105.00 from April, 1875; with interest on $105.00 from October, 1875, and with interest on $105.00 thereof from April 15th, 1876, and for costs of suit.

ROSS BURNS,
Attorney for Plaintiff.

coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused, because said defendant had not, nor did it ever have, funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1875.

And for a 14th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the
26 sum of one thousand dollars at the Fourth National Bank in the city of New York, in the State of New York, with interest at the rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 15," a copy of which said bond, together with the certificate of the auditor of state of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition: that on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thereof thirty-five dollars at said Fourth National Bank in the city of New York, on the fifteenth day of October, 1875, for the interest then and there to be due on said bond, which coupon is in word and figures as follows:

"$35.] Due October 15th, 1875. $35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fé Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

27 That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof: that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded, but refused, because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of October, A. D. 1875.

And for a 15th cause of action says: That on the tenth day of September, 1872, at the township of Rock Creek, in the county of Jefferson

and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby for value received it promised, thirty years from date, to pay to the Atchison, Topeka & Santa Fé Railroad Company, a corporation duly created and organized under and in pursuance of the laws of the State of Kansas, or bearer, the sum of one thousand dollars, at the Fourth National Bank in the city of New York, in the State of New York, with interest at the
28 rate of seven per cent. per annum, payable semi-annually at said bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. 15, a copy of which said bond, together with the certificate of the auditor of State of the registration thereof, except as to number, is hereto annexed, marked "Exhibit A," and made a part of this petition. That on the seventeenth day of October, A. D. 1872, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by the said Township of Rock Creek, whereby it promised to pay to the Atchison, Topeka & Santa Fe Railroad Company or bearer thereof thirty five dollars, at said Fourth National Bank in the city of New York, on the fifteenth day of April, 1876, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:

"$35 Due April 15, 1876. [$35.

"The Township of Rock Creek, Jefferson County, Kansas, will pay to the Atchison, Topeka & Santa Fe Railroad Company or bearer thirty-five dollars, semi-annual interest railroad and depot bond No. 15, payable at Fourth National Bank, city of New York, State of New York.

"N. A. LAFON, *Trustee.*

"Attest: A. OWEN, *Clerk.*"

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since
29 been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded, but refused, because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of thirty-five dollars, which he claims, with interest from the fifteenth day of April, A. D. 1876.

Wherefore the plaintiff prays judgment against the said defendant for the sum of five hundred and twenty-five dollars ($525.00), the amount due on said several causes of action aforesaid, with interest $105.00 from April 15th, 1874; with interest on $105.00 from October 15th, 1874; with interest on $105.00 from April, 1875; with interest on $105.00 from October, 1875, and with interest on $105.00 thereof from April 15th, 1876, and for costs of suit.

ROSS BURNS,
Attorney for Plaintiff.

EXHIBIT A.

$1,000.00] UNITED STATES OF AMERICA. [No.

Rock Creek township railroad and depot bonds, State of Kansas, County of Jefferson.

Thirty years from the 15th day of October, 1872, the township of Rock Creek, in the County of Jefferson and State of Kansas, for
30 value received, promises to pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer, the sum of one thousand dollars, in lawful money of the United States, with interest from the said 15th day of October, 1872, at the rate of seven (7) per cent. per annum, payable semi-annually on the 15th days of April and October of each year, upon the presentation and surrender, as they severally become due, of the proper coupons therefor hereto attached, both principal and interest payable at the Fourth National Bank, in the city of New York and State of New York.

This bond is one of a series, amounting to the sum of twenty thousand dollars, made and issued to the said Atchison, Topeka & Santa Fé Railroad Company in payment of a subscription and donation to the said company in aid of the construction of its railroad depots and side tracks in said township, under and in pursuance of the provisions of an act of the legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvements, and providing for the registration of such bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872; and the faith of the said township is hereby pledged for the redemption and payment of said bonds and the interest coupons thereto attached.

In testimony whereof the township-trustee and clerk of said Rock Creek township have hereunto set their hands as such trustee
31 and clerk as by law it is provided shall be done this tenth day of September, A. D. 1872.

N. A. LAFON, *Trustee.*

Attest: ALBERT OWEN, *Clerk.*

Indorsed on the back thereof as follows:

STATE OF KANSAS, *ss:*

I, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that the same has been duly registered in my office according to law.

In witness whereof I have hereunto set my hand and affixed my seal of office at the city of Topeka, this 17th day of October, A. D. 1872.

[SEAL.] A. THOMAN, *Auditor.*

Precipe.

In the circuit court of the United States for the district of Kansas.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant. } Precipe for summons.

The clerk of said court will please issue a summons in the above-

entitled action, directed to the marshal of said district, returnable according to law; indorse thereon: "Suit brought for the recovery of money: amount claimed, five hundred and twenty-five dollars, with interest on 105$ thereof from April 15th, 1874, with interest on 105$ thereof
32 from October 15th, 1874, with interest on 105$ thereof from April 15th, 1875, with interest on 105$ thereof from October 15th, 1875, and with interest on 105$ thereof from April 15th, 1876, and for costs of suit."

April , 1876.

ROSS BURNS,
Att'y for Pl'ff.

(Endorsed:) No. 1548. In the circuit court of the United States for the district of Kansas. Henry Strong vs. Rock Creek Township, Jefferson Co., Kansas. Petition and Precipe. Filed April 25, 1876. A. S. Thomas, clerk.

Security for costs.

In the circuit court of the United States for the district of Kansas.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Chase, and State of Kansas, def't.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 21st day of April, 1876.

W. G. DICKINSON.

(Endorsed:) No. 1548. Circuit court United States. Henry Strong vs. Rock Creek Township. Bond for costs. Filed April 25, 1876. A. S. Thomas, clerk. Approved, A. S. Thomas, clerk.

33 And on this day, to wit, April 25th, 1876, the clerk of said court issued a writ of summons for the defendant in said entitled action, which said writ of summons, with the endorsement and marshal's return thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, district of Kansas, ss.

The United States of America to the marshal of the district of Kansas, greeting:

You are hereby commanded to notify the Township of Rock Creek, in the county of Jefferson, State of Kansas, that it has been sued by Henry Strong in the circuit court of the United States for the district of Kansas, and that unless it answer by the twenty-fifth day of May, A. D. 1876, the petition of the said Henry Strong against it, filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 5th day of May, A. D. 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 25th day of April, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

(Endorsed:) Suit brought for the recovery of money. Amount claimed, $525.00, with interest on $105 thereof from the 15th day of April, A. D. 1874, at the rate of per cent. per annum, with interest on $105.00 thereof from October 15th, 1874, with interest on $105 thereof
34 from April 15th, 1875, with interest on $105 thereof from October 15th, 1875, and with interest on $105 thereof from April 15th, 1876, and for costs of suit. Ross Burns, attorney for plaintiff. No. 1548. Circuit of the United States, district of Kansas. Henry Strong vs. The Township of Rock Creek, in the county of Jefferson, State of Kansas. Summons issued April 25, 1876, returnable May 5, 1876. Ross Burns, attorney for plaintiff.

U. S. Marshal's return.

DISTRICT OF KANSAS, *ss:*

Received this writ April 25th, 1876, and executed the same at Jefferson County, disfrict of Kansas, this 27th day of April, A. D. 1876, by delivering to each, J. Kennedy as chairman, W. J. Taylor as clerk, and H. G. Turner as treasurer of the within-named defendant, The Township of Rock Creek, in the county of Jefferson, State of Kansas, personally, full, true, and certified copies of this writ, with all endorsements thereon.

CHA'S H. MILLER, *U. S. Marshal.*
By C. L. VANDERPOOL, *Deputy.*

Marshal's fees:

To serving writ	$6 60
" actual expense, horse & buggy, one day	3 00
	$9 00

Filed April 29, A. D. 1876.

A. S. THOMAS, *Clerk.*

And on this day, to wit, Thursday, June 8th, 1876, in the June term, A. D. 1876, of said court, in the record of the proceedings thereof in said entitled action, is the following entry, to wit:

Journal entry.

HENRY STRONG,
vs.
35 THE TOWNSHIP OF ROCK CREEK, &C. } 1548

It is ordered by the court that this cause be, and the same is hereby, continued to the next term of this court.

And on this day, to wit, August 11th, 1876, the defendant, by its attorneys, filed in the clerk's office of said court its answer in said entitled action; which said answer, with the endorsements thereon, is in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the district of Kansas.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE county of Jefferson, and State of Kansas, defendant. } Answer.

And now comes the defendant herein, by Keeler, and Gephart, and D. H. Morse, its attorneys, and for answer to plaintiff's petition, herein filed, says:

I. That the bonds and coupons mentioned in said petition were issued for the purpose of securing the location of and aiding in the construction of two railroad depots, with suitable side-tracks, at two certain points in said township of Rock Creek, on the line of a railroad which was completed, built, and operated by the Atchison, Topeka and Santa Fe Railroad Company through said township long before any election was had or contract made by said township concerning the issu-
36 ing of said bonds wherefore said bonds and coupons are null and void, because said township never had any lawful authority to issue its bonds for any such purpose.

II. And for a second and further defense defendant says that N. A. Laton and Albert Owen, whose signatures appear upon the bonds and coupons mentioned in said petition, did not at any time have authority, as township officers or otherwise, to make or issue any of the said bonds or coupons for or in the name of said township, because the issuing of said bonds was never ordered by a vote of the qualified electors of said township, and the board of county commissioners of the county of Jefferson, in the State of Kansas, never determined nor declared the result of any election in said township to be in favor of the issuing of said bonds, nor did said county board ever determine or declare that the majority of the votes cast at any election in said township was in favor of any proposition to issue the bonds of said township.

III. And for a third and further defense defendant says that no interest upon the bonds mentioned in said petition is due from said defendant to any person whatever, because said bonds have never been registered in the manner required by law. There is not now and never has been in the office of the auditor of the State of Kansas any registration of any bonds of said township showing or stating that any bonds of said township were issued to aid in the construction of any railroad or other work of internal improvement, nor showing or stating
37 that any such bonds *bonds* were issued either for a donation or for stock in any railroad or company whatever.

IV. And for a fourth and further defense, defendant says that the bonds and coupons mentioned in said petition were issued by the township officers of said township without authority of law, because no election was ever held in said township upon any proposition concerning the issuing of said bonds, unless the proposition submitted at an election held in said township August 27th, A. D. 1872, has reference to the issuing of said bonds. A copy of the only notice given of said election by the officers of said township is hereto attached, marked "Exhibit A." At said election the majority of the votes cast by electors of said township was against said proposition, and the board of county commissioners of the county of Jefferson, in the State of Kansas, never de-

termined nor declared that a majority of the votes cast at said election was in favor of the proposition submitted thereat. The said road mentioned in said notice was completed and in full operation through said township a long time prior to said election, and the depots and side tracks mentioned in said notice would not have cost, and did not when afterward constructed cost more than six thousand dollars for the material and the construction thereof. The real inducement held out by the Atchison, Topeka & Santa Fé Railroad Company and its agents to cause the electors of said township to vote for said proposition was
38 a threat by said company that unless said township would donate twenty thousand dollars of its bonds to said company said company would have no depot in said township, and would not ship nor unload freight nor passengers therein, but would so run its trains as to deprive the people of said township of the use and benefit of said railroad as a means of commercial intercourse. In A. D. 1872 the total taxable property of said township, as assessed for taxation by the township trustee of said township, acting in his capacity as assessor thereof, did not exceed in value one hundred and eighty thousand dollars. Neither said township nor the officers thereof ever made any subscription whatever upon the books of said railroad company.

The bonds mentioned in plaintiff' petition were never registered in the manner provided by law, and the plaintiff herein did not purchase the coupons mentioned in said petition before they were due according to the terms thereof, and said plaintiff had notice long before he purchased any of said bonds or coupons of the defense of said township hereinbefore set forth.

KEELER AND GEPHART AND
D. H. MORSE AND W. N. ALLEN,
Attorneys for Defendants.

STATE OF KANSAS,
Jefferson County, ss:

Personally appeared before me, S. P. Henderson, clerk of the district court in and for said county, Henry Keeler, who, being by me first
39 duly sworn, on his oath says that he believes the facts stated in the foregoing answer to be true. Affiant further says that he is an attorney of the defendant, Rock Creek Township, in Jefferson County, State of Kansas.

HENRY KEELER.

Subscribed and sworn to before me this 20th day of May, A. D. 1876.
[SEAL.] S. P. HENDERSON,
Dis't Clerk.

Election notice.

Whereas, on the 30th day of July, A. D. 1872, the township trustee, clerk, & treasurer of the township of Rock Creek, in the county of Jefferson, in the State of Kansas, did make an order of which the following is a copy and made a part hereof, to wit:

Whereas a petition signed by more than two-fifths of the qualified voters of the township of Rock Creek, in the county of Jefferson, State of Kansas, has been presented to the trustee, clerk, and treasurer of said township, asking that the question of aiding in the construction of two permanent depots in said township, and on the line of the Atchison Topeka and Santa Fé Railroad, by a donation of the bonds of said

township to the Atchison, Topeka and Santa Fé Railroad Company for such purposes, and in the sum of twenty thousand dollars: It is therefore ordered that a special election shall be held in said township on the 27th day of August, A. D. 1872, for the purpose of submitting to the
40 qualified voters of said township the question of aiding in the construction of two permanent depots, with side tracks to accommodate the same, on the line of the Atchinson, Topeka & Santa Fé Railroad, in said township, by a donation to the Atchison, Topeka and Santa Fé Railroad Company of the bonds of said township, in the sum of twenty thousand dollars, for such purpose, said bonds to be issued in sums of one thousand dollars each, payable in thirty years from the date of issue, payable in the city of New York, and bearing interest at the rate of seven per cent. per annum, payable semi-annually in the city of New York, signed by the trustee of said township and attested by the township clerk, and upon the following conditions, to wit: Said bonds to be issued as aforesaid, and delivered to the said company whenever said company shall have constructed and completed said depots and said side tracks in said township, the same to be located as follows, to wit: one depot at some point within one-half of one mile of the point where said company's railroad intersects the line between the northeast quarter of the southeast quarter of section twenty (20), township nine (9), in range seventeen (17) east, and the other depot at a point within one-half of one mile of the point where said company's railroad intersects the west boundary-line of section seven (7), in township ten (10), range seventeen (17) east, and each to be accommodated with side tracks suitable and of sufficient length for the accommodation of the business to be done at said depots, the said company to erect said depots and each of them, and to
41 construct the said side-tracks of the same so that the same shall be ready for use, and the reception of business thereat on or before the 15th day of October, A. D. 1872, otherwise the said company to forfeit all claims to the said bonds; the said election shall be conducted in all respects and the returns thereof made and the result thereof declared in the manner prescribed by law. The polls shall be opened at the usual place of voting in said township and shall be kept open from nine o'clock in the forenoon of said day until six o'clock in the afternoon of said day, those voting in favor of said proposition shall have written or printed on their ballots "for the railroad donation and bonds," those voting against the proposition shall have written or printed on their ballots "against the railroad donation and bonds."

In witness whereof we have hereunto set our hands this 30th day of July, 1872.

N. A. LAFON,
Trustee.
ALBERT OWEN,
Clerk.

(Endorsed:) No. 1548. Henry Strong vs. Township of Rock Creek. Answer. I agree that this answer may be filed this date. Aug't 11, 1876. Rass Burns, att'y for pl'ff. Filed Aug. 11, 1876. A. S. Thomas, clerk.

And on this day, to wit, August 11, 1877, the plaintiff, by his attorney, filed in the clerk's office of said court h s reply in said entitled action: which said reply is in the words and figures, to wit:

Reply.

In the circuit court of the United States for the district of Kansas.

42 HENRY STRONG, PL'FF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson and State of Kansas, def't. } Replication.

The said plaintiff, for reply to the answer of the said defendant, says he denies each, every, all and singular the allegations and averments therein contained, and prays judgment as in his petition herein.

RASS BURNS,
Att'y for Pl'ff.

(Endorsed:) No. 1548. Henry Strong vs. The Township of Rock Creek, in the county of Jefferson and State of Kansas. Reply. Filed Aug. 11, 1876. A. S. Thomas, clerk.

And on this day, to wit, Saturday, December 2nd, 1876, in the November, A. D. 1876, term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal-entry.

HENRY STRONG
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, Kansas. } 1548.

Continued generally.

And on this day, to wit, June 11, 1877, the parties herein, by their attorneys, filed in the clerk's office of said court their stipulation waiving jury in said entitled action; which said stipulation waiving jury is in the words and figures following, to wit:

Stipulation waiving jury.

In the circuit court of the United States for the district of Kansas.

43 HENRY STRONG
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, Kansas. } No. 1548. Stipulation waiving jury.

The parties to this action hereby waive the intervention of a jury and agree that this action may be tried by the court.

A. L. WILLIAMS,
Attorney for Plaintiff.
KEELER & GEPHART,
Attorneys for Defendant.

(Endorsed:) No. 1548. Henry Strong vs. The Township of Rock Creek, Jefferson Co., Ka's. Stipulation waiving jury. Filed June 11, 1877. A. S. Thomas, clerk.

And on this day, to wit, July 10, 1877, in the June, A. D. 1877, term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Judgment & certificate of division.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant. } No. 1548.

And now comes the plaintiff in this action, by Ross Burns and A. L. Williams, his attorneys, and the defendant, by Keeler & Gephard & Clough & Wheat, its attorneys, and the parties hereto, by their attorneys, having waived a jury by written stipulation filed herein, & submit this cause to the court for trial; and the court, having heard the evidence, adduced and arguments of counsel, now find for the plaintiff, and
44 assess his damages against the defendant herein at the sum of $604.88.

It is therefore now by the court here considered, ordered, and adjudged that said plaintiff, Henry Strong, have and recover of and from said defendant herein, The Township of Rock Creek, in the county of Jefferson, State of Kansas, the sum of six hundred and four [illegible] dollars, and his costs in this behalf expended.

Upon the trial of said action there occurred a difference of opinion between the judges, which certificate of division of opinion is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas:

At a circuit court of the United States, begun and held at Leavenworth City, in the district of Kansas, on Monday, the 4th day of June, A. D. 1877—present, Hon. John F. Dillon, circuit judge of the eighth judicial circuit of the United States, and Hon. C. G. Foster, judge of the district court of the United States for the district of Kansas—among others, the following proceedings were had, to wit:

MONDAY, *June* 9, 1877.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNTHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant.

Be it remembered that at the trial of this action, at the June term, A. D. 1877, of the circuit court of the United States for the district of Kansas, before two judges thereof, viz, the Hon. John F. Dillon, circuit judge, and the Hon. C. G. Foster, judge of the district court of the United States for the district of Kansas, the plaintiff introduced in evi-
45 dence the coupons sued on, copies of which are contained in plaintiff's petition, and the bonds from which said coupons were taken, which bonds are in form as alleged in said petition and as shown by the copy of said bond marked "Exhibit A" attached thereto, which copy of said bonds is here referred to as part hereof for a description of the same; and also introduced testimony showing that plaintiff was an innocent purchaser, for value, of such coupons, before maturity; and the defendant offered in evidence testimony sufficient to show—

1st. That the only election held in said township upon any proposition of issuing the bonds of said township was the election mentioned in the fourth paragraph of defendant's answer upon the proposition of which Exhibit A, annexed to said answer, is a copy, and that at said election the total number of votes cast by qualified electors of said township was 102, of which 51 were for and 51 against the said propo-

sition, and that one Salem Rice, who was not a qualified elector of said township, cast his vote at said election in favor of said proposition.

2nd. That the county commissioners of said county of Jefferson never canvassed the returns of said election, and never determined nor declared the result of any election in said township to be in favor of issuing any of the bonds of said township, but upon the records of the county the following entry was made prior to the issuance of the bonds:

46 Commissioner's journal, August term, 1872.

Friday, August 30th, 1872.—At this, a called meeting of the board, there was present H. W. Wellman and P. M. Gilbert.

The board proceeded to canvass the vote of Rock Creek Township on the proposition to donate the bonds of said township to the Atchison, Topeka and Santa Fé Railroad Company, and determine the following as a result of said election:

For the issuing of said bonds	52 votes.
Against " " " "	51 "
Total	103 "

Adjournment. *Upon* motion, it was ordered that the board adjourn to meet Monday, September 2nd, 1872.

I, W. F. Gilluly, county clerk in and for the county of Jefferson, State of Kansas, do hereby certify the foregoing to be a true, full, and complete record of the proceedings of the board of county commissioners of said county on the 30th of August, A. D. 1872.

Witness my hand and official seal.

[SEAL.] W. F. GILLULY,
County Clerk.

STATE OF KANSAS,
Jefferson County, ss:

I, D. B. Baker, county clerk of the county of Jefferson, in the State, hereby certify that the above and foregoing is a full, true, and correct copy of the only record in my office as such county clerk of or concerning any action of the board of county commissioners of said county
47 upon or in reference to the result of any election, or purported election, held in the township of Rock Creek, in said county, in A. D. 1872, upon any question of issuing the bonds of said township

In testimony whereof I hereunto sign my name and affix my official seal, at my office in the city of Oskaloosa, in said county, this 8th day of May, A. D. 1877.

[SEAL.] D. B. BAKER,
County Clerk.

Fee of county clerk, $0.35, paid.

3rd. That there is not now and never has been in the office of the auditor of the State of Kansas any registration of any bonds of said township, showing or stating that any bonds of said township were issued to aid in the construction of any railroad, or other work of internal improvement, nor showing or stating that any bonds were ever issued by said township, either for a donation or for stock in any railroad or company whatever. But the auditor's certificate of registration was placed on said bonds, as the same appears in the copy of the bond set out in pl'tf'ff's petition

4th. That the depots and side-tracks mentioned in said bonds, in the subscription therefor, and in said proposition, were, pursuant to said

proposition and subscription, located and erected upon and appurtenant to a railroad already built and in operation through said township before and at the time of said election, subscription, and issuance of bonds.

Whereupon the following questions arose, upon which the judges then sitting were divided in opinion, & which they hereby certify to the Supreme Court, to wit:

48 1st. Does the act of the legislature of the State of Kansas, referred to in said bonds, authorize the issuance of the bonds of a township to aid in the construction of depots and side tracks, as recited in the bonds in suit?

2nd. Are the bonds mentioned in plaintiff's petition void, for the reason that they are made payable thirty years and thirty five days from their date of execution therein written, but only drawing interest for the last 30 years of said time?

3rd. Is the defendant estopped by the recitals in said bonds from introducing the testimony offered by defendant, as above stated?

4. On the foregoing facts is the plaintiff entitled to recover?

JOHN F. DILLON,
Circuit Judge.
C. G. FOSTER,
Dis't Judge.

49 Supreme Court of the United States.

HENRY STRONG, PLAINTIFF,
vs.
THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY of Jefferson, State of Kansas, defendant.

Know all men by these presents that we, Rock Creek Township, in Jefferson Co., Kan., and of Jefferson County, Kansas, are held and firmly bound unto Henry Strong in the sum of five hundred dollars to be paid to the said Henry Strong, his executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 12th day of December, A. D. 1877.

Whereas the above-named Township of Rock Creek, in Jefferson County, Kansas, hath prosecuted a writ of error to the Supreme Court of the United States upon a division of opinion in the above cause to reverse the judgment rendered in the above entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named Township of Rock Creek, in county of Jefferson, State of Kansas, shall prosecute its said writ of error to effect, and answer all costs if it shall make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

J. KENNEDY, [L. S.]
50 *As trustee of Rock Creek Township, in Jefferson County, Kansas.*
A. DAWSON, [L. S.]
M. S. PETERSON. [L. S.]

Sealed and delivered in presence of—
PATRICK TOOLE.

(Endorsed:) No. 1548. Henry Strong vs. Rock Creek Tow'p, &c. Appeal bond. Filed Dec. 14, 1877. A. S. Thomas, clerk.

51 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings in the action of Henry Strong vs. The Township of Rock Creek, in the county of Jefferson, and State of Kansas, No. 1548 in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this fifteenth day of December, A. D. 1877.

[SEAL.] A. S. THOMAS, *Clerk*.

52 (Indorsed:) No. 1548. Henry Strong vs. The Township of Rock Creek, in the county of Jefferson, & State of Kansas. Transcript.

53 UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Henry Strong, plaintiff, against The Township of Rock Creek, in the county of Jefferson, State of Kansas, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 15th day of December, A. D. 1877.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States
for the District of Kansas.

(Indorsed:) No. 1548. Henry Strong vs. The Township of Rock Creek, in the county of Jefferson, Kans. Writ of error. Filed Dec. 15, 1877. A. S. Thomas, clerk.

$11.05 fees of clerk for this transcript paid by def't's att'ys, Dec. 15, 1877.

A. S. THOMAS, *Clerk*.

(Indorsement on cover:) No. 1024. The Township of Rock Creek, in the county of Jefferson, plaintiff in error, vs. Henry Strong. Kansas C. C. U. S. Filed 24th December, 1877.

IN THE SUPREME COURT

OF THE UNITED STATES.

THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY OF JEFFERSON, STATE OF KANSAS, *Plaintiff in Error*,

vs.

HENRY STRONG, *Defendant in Error*.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

IN THE SUPREME COURT

OF THE UNITED STATES.

THE TOWNSHIP OF ROCK CREEK, IN THE COUNTY OF JEFFERSON, STATE OF KANSAS, *Plaintiff in Error*,

vs.

HENRY STRONG, *Defendant in Error*.

STATEMENT OF THE CASE.

Henry Strong, the defendant in error, sued Rock Creek township, Jefferson county, Kansas, in the Circuit Court for the District of Kansas, upon fifteen interest coupons, which were attached to bonds issued by said township to aid the construction of depots and side-tracks by the Atchison, Topeka & Santa Fé Railroad Company in said township. The bonds were issued under the supposed authority of an act of the Legislature of Kansas, entitled "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2, 1872. The bond is as follows:

$1,000.00. UNITED STATES OF AMERICA. No. ——

ROCK CREEK TOWNSHIP RAILROAD AND DEPOT BONDS.

State of Kansas, County of Jefferson.

Thirty years from the 15th day of October, 1872, the township of Rock Creek, in the county of Jefferson and State of Kansas, for value received, promises to pay to the Atchison, Topeka & Santa Fé Railroad Company, or bearer, the sum of one thousand dollars, in lawful money of the United States, with interest from the said 15th day of October, 1872, at the rate of seven (7) per cent. per annum, payable semi-annually on the 15th days of April and October of each year, upon the presentation and surrender, as they severally become due, of the proper coupons therefor hereto attached, both principal and interest payable at the Fourth National Bank in the city of New York, and State of New York.

This bond is one of a series, amounting to the sum of twenty thousand dollars, made and issued to the said Atchison, Topeka & Santa Fé Railroad Company in payment of a subscription and donation to the said company in aid of the construction of its railroad depots and side-tracks, in said township, under and in pursuance of the provisions of an act of the Legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2, 1872; and the faith of the said township is hereby pledged for the redemption and payment of said bonds and the interest coupons thereto attached.

In testimony whereof, the township trustee and clerk of said Rock Creek township have hereunto set their hands as such trustee and clerk, as by law it is provided shall be done, this 10th day of September, A. D. 1872.

N. A. LAFON, *Trustee.*

Attest: ALBERT OWEN, *Clerk.*

Indorsed on the back thereof as follows:

STATE OF KANSAS, ss.

I, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, and the signatures thereto are genuine, and that the same has been duly registered in my office according to law.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at the city of Topeka, this 17th day of October, A. D. 1872.

[L. S.] A. THOMAN, *Auditor.*

The plaintiff introduced in evidence at the trial, the coupons sued on, and the bonds from which they were detached; and also introduced testimony showing that plaintiff was an innocent purchaser for value of such coupons before maturity.

The defendant offered in evidence, testimony sufficient to show—

1. That the only election held in said township upon any proposition of issuing the bonds of said township, was the election mentioned in the fourth paragraph of defendant's answer, upon the proposition of which Exhibit A, annexed to said answer, is a copy, and that at said election the total number of votes cast by qualified electors of said township was 102, of which 51 were for and 51 were against the said proposition; and that one Salem Rice, who was not a qualified elector of said township, cast his vote at said election in favor of said proposition.

2. That the county commissioners of said county of Jefferson never canvassed the returns of said election, and never determined nor declared the result of any election in said township to be in favor of issuing any of the bonds of said township, but upon the records of the county the following entry was made prior to the issuance of the bonds:

[P. 46, Commissioners' Journal, August Term, 1872.]

FRIDAY, August 30, 1872.—At this, a called meeting of the board, there were present H. W. Wellman and P. M. Gilbert.

The board proceeded to canvass the vote of Rock Creek township on the proposition to donate the bonds of said township to the Atchison, Topeka & Santa Fe Railroad Company, and determine the following as a result of said election:

For the issuing of said bonds	52 votes
Against the issuing of said bonds	51 votes
Total	103 votes

Adjournment: Upon motion, it was ordered that the board adjourn to meet Monday, September 2, 1872.

I, W. F. GILLULY, county clerk in and for the county of Jefferson, State of Kansas, do hereby certify the foregoing to be a true, full and complete record of the proceedings of the board of county commissioners of said county, on the 30th of August, A. D. 1872.

Witness my hand and official seal.

[L. S.] W. F. GILLULY, *County Clerk.*

STATE OF KANSAS, }
COUNTY OF JEFFERSON, } ss.

I, D. B. BAKER, county clerk of the county of Jefferson, in this State, hereby certify that the above and foregoing is a full, true and correct copy

of the only record in my office as such county clerk, of or concerning any action of the board of county commissioners of said county, upon or in reference to the result of any election, or purported election held in the township of Rock Creek in said county, in A. D. 1872, upon any question of issuing the bonds of said township.

In testimony whereof, I hereunto sign my name and affix my official seal, at my office in the city of Oskaloosa, in said county, this 8th day of May, A. D. 1877.

[L. S.] D. B. BAKER, *County Clerk.*

Fee of County Clerk, $0.35; paid.

3. That there is not now, and never has been, in the office of the Auditor of the State of Kansas, any registration of any bonds of said township, showing or stating that any bonds of said township were issued to aid in the construction of any railroad, or other work of internal improvement, nor showing, or stating that any bonds were ever issued by said township, either for a donation, or for stock in any railroad or company whatever. But the Auditor's certificate of registration was placed on said bonds, as the same appears in the copy of the bond set out in plaintiff's petition.

4. That the depots and side-tracks mentioned in said bonds in the subscription therefor, and in said proposition, were, pursuant to said proposition and subscription, located and erected upon and appurtenant to a railroad already built and in operation through said township before and at the time of said election, subscription and issuance of bonds.

The questions involved are stated by the judges in their certificate of division, as follows:

1. Does the act of the Legislature of the State of Kansas, referred to in said bonds, authorize the issuance of the bonds of a township to aid in the construction of depots and side-tracks, as recited in the bonds in suit?

2. Are the bonds mentioned in plaintiff's petition void, for the reason that they are made payable thirty years and thirty-five days from their date of execution therein written, but only drawing interest for the last thirty years of said time?

3. Is the defendant estopped by the recitals in said bonds

from introducing the testimony, offered by defendant as above stated?

4. On the foregoing facts is, the plaintiff entitled to recover?

JOHN F. DILLON, *Circuit Judge.*
C. G. FOSTER, *District Judge.*

ASSIGNMENT OF ERRORS.

I. That the court erred in not deciding that the act of the Legislature referred to in said bonds, did not authorize the issuance of the bonds of a township to aid in the construction of depots and side-tracks, as recited in the bonds in suit.

II. That the court erred in not deciding that the bonds mentioned in plaintiff's petition were void, for the reason that they were made payable thirty years and thirty-five days from their date of execution, as therein written.

III. That the court erred in not holding that the township was not estopped by the recitals in said bonds from introducing the testimony offered by the defendant.

IV. That the court erred in not finding for the defendant.

BRIEF, AND ARGUMENT.

The first question upon which the judges divided, is as follows:

"Does the act of the Legislature of the State of Kansas, referred to in said bonds, authorize the issuance of the bonds of a township to aid in the construction of depots and side-tracks, as recited in the bonds in suit?"

The railroad was "already built and in operation through "said township before and at the time of said election, sub-"scription and issuance of bonds." (Record, page 23.)

The first section of the act, to which we must look for the power to issue these bonds, is as follows:

"SECTION 1. That the board of county commissioners of any county, the mayor and common council of any incorporated city, and the trustee, clerk and treasurer of any municipal township, in this State, are hereby empowered to issue the bonds of such county, city or township, in any sum

necessary, not greater than ten per cent., inclusive of all other bonded indebtedness, of the taxable property of such county, city or township, for the purpose of building bridges, free or otherwise, or to aid in the construction of railroads or water power by donation thereto, or the taking of stock therein, or for other works of internal improvement: *Provided*, That all counties may issue in addition to the amount authorized by this section, bonds not to exceed one hundred thousand dollars; and all counties having property of an assessed valuation of three million dollars or more, may issue in addition thereto, two hundred thousand dollars: *Provided further*, That under a proposal for aid to any railroad, any township having less than two hundred thousand dollars taxable property may issue, in addition to the ten per cent. authorized in this section, ten per centum of an amount equal to the number of miles of railroad (agreed under such proposal to be constructed within such township) multiplied by six thousand: *And provided further*, That the limit prescribed in this section shall not apply and be considered to restrict or prevent the issuing of any bonds heretofore voted, or vote now pending, in any county or township in this State, and which bonds may not have yet been issued, but that the limit herein shall only be considered as applying only to the issuing of bonds to be hereafter voted under this law."

I.

If it be held that by the above act power was conferred upon the municipal township of Rock Creek to issue the bonds in question, that power must be found in the words, "to aid in the construction of railroads," or, "for other works of internal improvement."

It would not seem to be necessary to invoke the aid of the rule of strict construction, to show that the act confers no power upon the township to aid railroads already established to build depots and side-tracks. But the rule is so wise and just, and so firmly established by judicial authority, that it may not be improper to mention it. In *Minturn vs. Larue*, 23 Howard, 435, Mr. Justice NELSON said: "It is a "well-settled rule of construction of grants by the Legisla- "ture to corporations, whether public or private, that only "such powers and rights can be exercised under them as are "clearly comprehended within the words of the act, or de- "rived therefrom by necessary implication, regard being had

"to the objects of the grant. Any ambiguity or doubt aris-"ing out of the terms used by the Legislature must be re-"solved in favor of the public. This principle has been so "often applied in the construction of corporate powers, that "we need not stop to refer to authorities." See also *Thompson vs. Lee County*, 3 Wallace, 327; *Thomas vs. City of Richmond*, 12 Wallace, 349; and numerous decisions in the State courts.

Now if the language of this act of the Kansas Legislature leaves it doubtful whether it confers the power upon the township to issue bonds in aid of depots and side-tracks, we are to inquire how the doubt is to be resolved; when that is ascertained there is no difficulty. Applying the principle so well established, that doubts as to the existence of power supposed to be conferred by legislative enactment, must be resolved against its existence, it becomes clear that power to aid the building of depots and side-tracks is not given in this act. As Judge BLACK remarked in one of his opinions as Attorney General: "My reason may seem paradoxical; "but the very obscurity of the grant, in my judgment, makes "it clear. It is out of these doubts that certainty grows." (9 Opinions Attorney General, 275.)

It cannot be denied that the language of the act leaves doubt, a reasonable doubt, as to the intention of the Legislature. The court below doubted, and divided. There is probably not a well-informed lawyer in the United States, who, if asked the question whether this statute confers the power to issue bonds in aid of depots and side-tracks to a completed railroad, would not hesitate, and answer: "I have grave doubts." The doubt is apparent as soon as the language is examined. "To aid in the construction of railroads," says the statute. Can it be claimed for a moment that the language "clearly and explicitly" confers power to,

aid the building of depots and side-tracks for a railroad already in operation? Had the Legislature intended to grant such power, appropriate language might easily have been found to express that intention. But it was thought, no doubt, by the law makers, that when a railroad had been aided in its construction, it would not be necessary to aid it again to build the depots and side-tracks needed for the accommodation of the public. It is urged that depots and side-tracks were necessary, and without them the people of the township could derive no benefit from the road. True; but the question is not one of necessity, but of interpretation of language. The people can get no benefit from the road unless conductors, brakemen, engineers and firemen are employed, but that fact would not warp the meaning of the act so as to justify an issue of bonds to pay employés. If the question of necessity, or utility, is to be considered, there is no limit to which the language of the act may not be pushed. The depot building will need a new coat of paint. Let bonds be issued, because a new coat of paint on the station is necessary, and therefore part and parcel of that magnificent whole, which is called "constructing a railway." But the Legislature meant nothing so absurd. It was intended to authorize municipal corporations to assist the building of railways, to aid incipient enterprises in the days when it might be reasonably expected that they needed help. But to say that this act was intended by the Legislature to authorize townships to take these enterprises under their fostering care, is to do violence to the language used, and to the plainest dictates of public policy.

If this court shall hold that under the general phrase, "to aid in the construction of railroads," municipal corporations may vote bonds to pay for depots and side-tracks for railroads already completed, the mania which has so long af-

flicted our people will receive new life, and enter upon a new career of destruction. The evils which have already sprung from reckless voting of bonds will be continued and increased. Hitherto it has been supposed that authority "to aid the construction of railroads" simply empowered townships and cities to aid the original construction of the road. Now, for the first time, it is asserted that the language authorizes a continuing aid, after the road has been completed and put into operation.

But there is another reason why it cannot be held that the Legislature intended by this act to authorize municipal aid to the building of stations and side-tracks: *it is the legal duty of a railroad corporation to furnish the necessary depots and side-tracks for the accommodation of the public*, and it cannot be presumed that the Legislature intended to authorize townships to impose a tax upon the public to pay for something they were legally entitled to have without pay. I find this doctrine strongly asserted in brief of Mr. Strong, who observes that "the people of the town had a legal right "to get the benefit of the road, and to partly indemnify the "company for the required outlay for the purpose of complet-"ing the road within the township." Now, the right of the people "to get the benefit of the road" does not depend upon this statute, but exists entirely independent of it. But their right to pay for the depots depends wholly upon this statute, and I urge upon the court, as a proposition too plain for discussion, that the Legislature, knowing that the people "had a legal right to get the benefit of the road," did not intend by this statute to authorize them to pay for that right. The object of this statute, in so far as it refers to railways, was to get them built, not to induce the companies after they were built to furnish suitable accommodations for the public. The Legislature had a right to presume that the

railroad companies, consulting their own interest and that of the public, would furnish suitable stations with the appurtenant side-tracks necessary to the carrying on of their traffic. Depots and side-tracks were not in their minds when this act was passed. They supposed that depots and side-tracks would be furnished as a matter of course, never dreaming that it would be necessary to vote bonds to obtain them after the line of the road was completed.

In *St. Joseph & Denver City Railroad Co. vs. Ryan*, 11 Kansas, 602, the Supreme Court of Kansas said, per BREWER, J.: "Upon the same principle, it is the duty of "a railroad company to furnish reasonable depot facilities. "The number and location of the depots so as to constitute "reasonable depot facilities, vary with the changes and "amount of population and business. A contract to leave "a certain distance along the line of the road destitute of "depots, is in contravention of this duty." Mr. Strong asserts that the road without the side-tracks and stations was as useless to the town as if the main track had stopped at the town line. But if the Supreme Court of Kansas is correct in holding that a railroad company is bound to furnish reasonable depot facilities, it was a clear violation of public duty to leave the road in a "useless" condition. An act authorizing the imposition of a tax upon the public to pay for something which they are entitled to have without pay, would be positively immoral and wrong.

The claim made by the defendant in error is, that the Kansas Legislature deliberately authorized a fraud, deliberately passed an act empowering railroad companies to coerce townships into the payment of a large bonus to secure what they were legally entitled to have without any payment whatever. Bargains for the location of depots at specified places are in their very nature dishonest. They enable in-

terested parties to secure advantages at the expense of the public. They subject public interests to the mercy of speculators. They encourage railroad companies to operate their roads, not for the legitimate purposes of traffic and business, but for the purpose of securing bribes for the performance of duty. In the case of the *Pacific Railway Company vs. Seeley*, 45 Mo., 212, Mr. Justice WAGNER said: "The agree-"ment in this case was to give the company an interest in "town lots, *provided it would locate its station at a certain* "*specified place*. It is easy to perceive how such a transaction "might be perverted so as to operate most injuriously to the "public. Speculators and landed proprietors, for the pur-"pose of enhancing their property, would always be on hand "to obtain locations, and forcing people to their premises, "regardless of the consideration whether they were most fit "and convenient; and the company, *tempted by the prospect* "*of gain*, would accede to those propositions, and thus the "general welfare and good of the public would be sacrificed "to subserve mere private interests. Whilst conditional sub-"scriptions of stock may be entirely valid, I do not think "agreements of this character should be upheld."

In the above case, the agreement was to give land in consideration for the location of a station. Here, they gave bonds. The principle is of course the same, and the two transactions stand on the same footing. Is it possible that the Kansas Legislature intended (and without saying so) to authorize a transaction which, if entered into by a private person, could not be upheld? Suppose this railroad company had built no depots at all, from its eastern terminus on the Missouri river to its western terminus in the Rocky Mountains: would this act authorize it to compel all the townships, counties and cities along its line to issue bonds before the people should, as Mr. Strong says, "get the benefit

of the road?" If so, it must find its authority somewhere else than in the act of 1872.

I have argued that it is the duty of railroad companies to furnish suitable depots and side-tracks, and that therefore the act of 1872 cannot be construed as authorizing the issuing of bonds to pay them for doing so. But I wish to point out that the company to which these bonds were issued was under a peculiar obligation to do so. Mr. Strong says in his brief (page 3), that side-tracks and depots are "an essential "part of every railroad, *without which it would not be a rail-*"*road in the legal signification of the term.*" Now if the court will turn to chapter 84 of the General Statutes of Kansas, it will be seen that the State granted to this same railroad company a vast tract of land "in consideration that said "company should construct a railroad," &c. Thus, the duty of the Atchison, Topeka & Santa Fé Railroad Company to construct a railroad — not a mere line of track, but a railroad "in the legal signification of the term" — became much more emphatic than if this grant of land had not been made. If it would be immoral for an ordinary road to put up the location of its stations for sale, how much more so in the case of this road, which has been endowed and subsidized by the State. How, then, can it be supposed that the Legislature intended (without saying so) to authorize taxation to pay it for doing what it had already promised the State to do? From these considerations, it seems perfectly plain that in authorizing townships "to aid in the construction of railroads," the Legislature did not intend to authorize aid to the building of depots.

But every doubt as to the legislative intention is removed by a little further examination of the act. The court will notice that in the first place it empowers the municipal authorities to issue bonds in sums "*not greater than ten per*

cent.," &c. After the grant of power comes a proviso, relative to amount of bonds which counties may issue. Then comes a second proviso, relating specially to *railroads*. It sheds a flood of light on the question of legislative intent in granting power to aid in the construction of railroads. It reads:

"*Provided further*, That under a proposal for aid to any railroad, any township having less than two hundred thousand dollars taxable property may issue, *in addition to the ten per cent. authorized in this section*, ten per centum of an amount *equal to the number of miles of railroad* (AGREED UNDER SUCH PROPOSAL TO BE CONSTRUCTED WITHIN SUCH TOWNSHIP) multiplied by six thousand."

This proviso shows that the Legislature meant to authorize aid to the construction of a railroad — not to aid the building of depots. It contemplates a proposal, *stating the number of miles to be built in the township*, and making such number of miles a basis of calculation as to the amount of aid which might be rendered, in addition to the ten per cent. authorized in the granting clause. If the granting clause, standing alone, left it doubtful as to what the Legislature meant, this proviso removes that doubt. It makes everything plain and clear, and demonstrates beyond question that these bonds never had any legal existence — never had the breath of life breathed into them.

INTERNAL IMPROVEMENTS.

I do not suppose that it will be seriously claimed that these bonds were issued in aid of internal improvements, except as that term includes railroads. The act distinguishes between railroads and other works of internal improvement, by mentioning railroads, bridges and water power, and then adding, "or for other works of internal improvement." It is manifest that these bonds were issued under the supposed authority conferred by the act to "aid in the construction of railroads." A railroad company is the payee in the bond, and

it is recited that they are issued in aid of the construction of its railroad depots and side-tracks in said township. Therefore it cannot be supposed that these bonds were issued under the clause authorizing aid to "other works of internal improvement." Nor can it be claimed that depots and side-tracks are works of internal improvement, within the meaning of the act. The public owed no duty to the company, to aid it in constructing depots and side-tracks; but the company owed a duty to the public, to furnish them. I believe no valid reason can be assigned for considering any work an internal improvement so as to justify a donation which the public are entitled to have as a mere matter of right.

In *Township of Burlington vs. Beasley*, 4 Otto, 310, the court, per HUNT, J., said: "Railroads, turnpikes, buildings, "bridges, ferries, reclaiming swamps and the like, are no "doubt improvements. If such improvement is within the "limits of a town or county, it is internal to such town or "county."

It cannot be possible that in the above extract the court intended to hold that "buildings," regardless of their object and character, are internal improvements as contemplated by the act. Surely, bonds voted in aid of a private residence would not be valid, although a private residence is a building, and is usually situated "within the limits of a town or county." There must be some other test by which we may determine whether an improvement is of such a character as to justify taxation. I think it is this: Taxes may be imposed for such works, public in their nature, as are required for carrying on the government — such as State houses, penitentiaries, jails and court houses. Also, to secure improvements proposed to be constructed by private parties, which are of public interest and concern, but which such parties are

not bound to construct unless they see fit to do so. Of this class are railroads, turnpikes, water power, steam mills, and the like. *But a work which is appurtenant to another one which has already been constructed, and which the owner is bound by his duty to the public to furnish as incident to the operation of the main work, is not such an internal improvement as will justify taxation.*

Take the case of *Township of Burlington vs. Beasley*, just cited. Mr. Stow, the gentleman who proposed to build the mill at Burlington, owed no duty to the public to build a mill. The public needed it, and had a right to aid its construction. But suppose, after the mill was built, Mr. Stow had insisted on having bonds issued before the public should have the privilege of using the mill, or for providing accommodations which he was bound to provide as a duty imposed on him by law: such bonds could not be sustained by claiming that they were issued in aid of internal improvements.

II.

THE EXCESS OF TIME.

The second question upon which the judges below divided is this: "Are the bonds mentioned in plaintiff's petition void "for the reason that they are made payable thirty years and "thirty five days from their date of execution therein written, "but only drawing interest for the last thirty years of said "time?"

Section 2 of the act under which these bonds were issued is as follows:

"SEC. 2. Such bonds shall be issued in denominations of not less than one hundred dollars, and shall be payable at such place in the city of New York as the officers issuing the same may direct, in not less than five nor more than thirty years from the date thereof, with interest not to exceed ten per centum per annum, all in the discretion of the officers issuing the same, which said interest shall be payable semi-annually, at such place where the principal sum is made payable, and for which said interest said bonds shall

have coupons attached. Such bonds, if issued by a county, shall be signed by the chairman of the board of county commissioners, and attested by the county clerk; if issued by a city, shall be signed by the mayor, and attested by the city clerk; and if issued by a township, shall be signed by the township trustee, and attested by the township clerk."

This section contains a number of requisites to be observed in the execution of the bonds—such as their denomination, place where payable, time to run, etc. Unquestionably the Legislature had the right to prescribe these regulations, which go directly to the question of power or authority in the township or county issuing. Under this law a municipal corporation has no power to issue bonds of a less denomination than one hundred dollars, and such a bond, if issued, would be void on its face—as clearly so as a bill issued by a national bank of a denomination different from those authorized by the currency act. So also with the other provisions of this section. A bond to run four years would be void on its face, as would also one running forty years. The excess of time in the bond in the present case is only thirty-five days.

In the case of *Commissioners of Marion County vs. Clark*, 4 Otto, 278, this court said, in reference to an objection of this kind, that it was "without merit, *as there is no excess in "time beyond thirty years, if the computation be made as it "should be, from the time the bonds were actually executed, "issued and delivered.*"

The reason given by the court in the language above quoted saved the bonds in that case, but cannot save them in this. The rule is undoubtedly well established, that the date of delivery is the true date of the instrument. But it is equally well established that the date of the instrument is to be taken as the date of delivery until the contrary is proven. In this case, the record does not show when the bonds were delivered; therefore the court is bound to presume that they were delivered on the day they bear date. The doctrine is

thus stated by Parsons, in his work on Notes and Bills, vol. 1, page 42:

"As a note takes effect only by delivery, so it takes effect only on delivery; and if this delivery be subsequent to the date, it is still to be considered as valid only from that day. In the absence of evidence to the contrary, the law will presume that it was delivered *on the day of the date.*"

The English courts lay down the same rule. In *Anderson vs. Weston*, 6 Bingham's Cases, BOSANQUET, J., said:

"Now when a deed is produced, and the execution of that deed is proved by the subscribing witness, or by accounting for the absence of the subscribing witness by death or otherwise, and proving the signature, and that deed bears a date, as far as my experience goes, that date has uniformly been taken to be *prima facie* evidence that the deed was executed *at the time when it purports to bear date.*"

In Edwards on Notes and Bills (2d edition), page 144, the rule is thus stated:

"The instrument is valid from the time of the delivery; and as it is customary to date notes and bills on the day they are made, *a delivery at the time will be presumed until the contrary appears.*"

There is not the slightest foundation for Mr. Strong's assertion in his brief, that the bonds were not delivered until October 17th. He makes the statement out of his own mind, and not from the record. He makes it to avoid the reasoning of the court in *Commissioners of Marion County vs. Clark.* The record not only does not sustain his assertion, but it positively overthrows it. In the petition in the case it is expressly alleged that the bonds were *made, issued* and *dated* on the 10th day of September. There is no other allegation of delivery, and no other proof of delivery. The beautiful story which Mr. Strong tells on page 5 of his brief, in explanation of the thirty-five days excess of time, is a fine illustration of his powers of imagination. He says the State Treasurer was "at a great distance," and therefore time must

necessarily be consumed. If it were proper to go out of the record, I would inform the court that the "great distance" is about twelve miles! and a train runs every day in about thirty minutes. Mr. Strong says "the registration shows "they were not delivered to the railroad company until Oc- "tober 17th." This is more absurd than the "great dis- "tance" argument.' The company had under the law thirty days in which to present the bonds to the Auditor for registration — thirty days *after* they were delivered. "Therefore," says Mr. Strong, "they were registered the *same day* they "were delivered." Whether tested by the record or by the rules of presumptive evidence, the conclusion is irresistible that these bonds were delivered the day they bear date, viz., September 10th, 1872. Under the law, they must be made payable "not more than thirty years from the date thereof." It is immaterial when they commence drawing *interest*. It is the *principal* which is to be paid in thirty years, and the limitation of time is on the principal, not the interest. The question, then, is here squarely presented, whether a bond, payable thirty years and thirty-five days from its date, is valid under this law. True, thirty-five days is only a short time; but the Legislature fixed the time at just thirty years. Beyond that the township could not go under its grant of power.

In *Marion County vs. Clark*, the court did not hold the bonds valid because the excess of time was so short, but because the *delivery* was within the thirty-years' limit. It follows that if the delivery had been outside of the limit, as in this case, the bonds would have been held invalid.

ESTOPPEL BY RECITALS.

The third question upon which the judges divided is as follows: "Is the defendant estopped by the recitals in said

"bonds from introducing the testimony offered by the de-
"fendant as above stated?"

After so many decisions of this court upon the doctrine of recitals, and estoppel growing out of recitals, the law is of course settled. I only wish to apply established principles to this case. It will, I think, plainly appear, that the township is not estopped by the recitals in these bonds from showing that the proceedings which were had preliminary to their issue were irregular, and that in fact a majority of the qualified electors voted against the issuance of the bonds. There is a reason for every rule of law. The doctrine of estoppel by recitals has been built up and established by a long line of judicial decisions, and the reason or philosophy of the rule has been frequently explained. It is this: *That when the officers or tribunal who by law are to determine whether the conditions precedent to the issuance of bonds have been complied with* ARE THE SAME PERSONS *who are to issue the bonds, their certificate or recital that the conditions have been complied with is conclusive.* The reason of the rule is apparent upon its face. *It rests in the fact that the person deciding the preliminary questions, and the person issuing the bonds, are one and the same.* When A. decides a fact, his own recital that he decided it is very justly held to be conclusive; but B.'s recital that A. had decided it, is of course conclusive of nothing.

If the doctrine is pushed to the extent of holding, as in *Knox vs. Aspinwall*, that the mere issuing of the bonds, with the recital that they were issued in pursuance of legislative authority, naming it, creates an estoppel, the reasoning remains the same. The only person who can raise an estoppel by recitals, is the one who had the right to decide the conditions precedent.

In the *Town of Coloma vs. Eaves*, 2 Otto, 484, the court, per STRONG, J., elaborately elucidates this doctrine, saying:

"At some time or other it is to be ascertained whether the directions of the act have been followed; whether there was any popular vote; or whether a majority of the legal voters present at the election did in fact vote in favor of the subscription. The duty of ascertaining was plainly intended to be vested somewhere, and once for all; and the only persons spoken of who have any duties to perform respecting the election, and action consequent upon it, are the town clerk and the supervisor, or other executive officer of the city or town. It is a fair presumption, therefore, that the Legislature intended that those officers, or one of them at least, should determine whether the requirements of the act prior to a subscription to the stock of the railroad company had been met. This presumption is strengthened by the provisions of the twelfth section, which make it the duty of the clerk to transmit to the county clerk a transcript or statement, verified by his oath, of the vote given, with other particulars, in case a subscription has been voted. *How is he to perform this duty if he is not to conduct the election and determine what the voters have decided?*"

In the same opinion, Mr. Justice STRONG says:

"In this case, the person or persons whose duty it was to determine whether the statutory requisites to a subscription and to an authorized issue of the bonds had been performed, were those whose duty it was ALSO to issue the bonds in the event of such performance."

Further on in the opinion, Judge STRONG clearly and concisely states the doctrine thus:

"Where legislative authority has been given to a municipality or to its officers to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with the power to decide whether the condition precedent has been complied with, THEIR recital that it has been made in the bonds issued by THEM and held by a *bona fide* purchaser is conclusive after the fact, and binding upon the municipality; for the recital itself is a decision of the fact by the appointed tribunal."

In the same case, Mr. Justice BRADLEY, who concurred in the judgment of the court but dissented from the opinion, said:

"If when the law requires a vote of tax-payers before bonds can be issued, the supervisor of a township or the judge of probate of a county, or other officer or magistrate, is the officer designated to ascertain whether such vote has been given, *and is also the proper officer to execute and who does execute the bonds*, and if the bonds themselves contain a statement or recital that such vote has been given, then the *bona fide* purchaser need go back no farther."

The above extracts give the rule and the reason of the rule. It turns upon the identity of the persons issuing the bonds and the persons authorized to determine the precedent conditions. Now in this case the precedent condition to the issuing of the bonds, was a majority vote of the qualified electors. *But the right to determine whether a majority of the votes was in favor of the bonds, was vested in an entirely different tribunal from the one authorized to issue the bonds.* The authority to issue the bonds is vested in the trustee, clerk and treasurer of the township, (§ 1.) But the election, the canvass of the vote, *and the determination of the result*, were to be in conformity to the general law. Section 5 is as follows:

"Such election shall be held at the usual places for holding elections in any such county, city or township, and shall be conducted by the officers or persons provided by law for the holding of elections in any county, city or township in this State; such election to be in all respects governed, *and the result declared*, according to the rules and regulations provided by law for holding elections in any such county, city or township."

It remains to be inquired, in what manner elections were to be conducted, by whom, and how the result was to be declared by the law in force at the time the bonds were voted. By reference to the election laws of Kansas, it will be found that in no election, whether general or local, had the township authorities any voice whatever in determining the result.

The persons who conduct the elections at the voting precincts are the trustee and two justices of the peace, if they happen to be present; otherwise the electors select the persons to conduct the election from the bystanders. Neither the town clerk or treasurer have anything whatever to do with the election, and the trustee can only be present at one of the precincts in the township, and the law does not require him even to be there. (Chapter 110, General Statutes of Kansas, page 1082.)

The returns of the various voting places are not sent to the township officers, but transmitted directly to the county clerk to be canvassed by the county commissioners. Not even the election of a constable can be determined by the township authorities. The law confers all power in the premises upon the county commissioners.

"SEC. 9. *The board of county commissioners shall constitute the board of canvassers*, and they shall assemble at the office of the county clerk, in their respective counties, on the second Tuesday of April in each year, and proceed to canvass the votes for the respective township officers. When a new township shall have been organized, and the time and place of holding the first election therein fixed by the board of county commissioners, such board shall meet on Tuesday succeeding such election to canvass the vote.

"SEC. 10. *They shall determine who have been elected to the several offices in each township*, in their respective counties, which determination they shall reduce to writing, and cause a certified copy thereof to be filed in the office of the county clerk; and it shall be the duty of the said county clerk to issue certificates of election to the persons so determined to be elected, and deliver or forward the same to the persons entitled thereto.

"SEC. 11. In all cases of a tie between the officers to be elected under this act, *the county board* shall determine by lot which shall be elected.

"SEC. 12. All vacancies in the offices of trustee, clerk, treasurer or constable of any township, shall be filled by appointment *by the board of county commissioners*."

The act under which these bonds were issued, by providing that they should be issued by the trustee, clerk and treasurer, while the election should be governed *and the result declared* according to the law then in force, set up two tribunals — one to issue the bonds, the other to determine whether

they were to be issued. The township officers had one duty to perform, the county officers the other. Now, then, can it be claimed that the recitals of the one are conclusive of the matter which was referred exclusively to the other?

Apply the reasoning of Mr. Justice STRONG, in *Town of Coloma vs. Eaves*, to this case, and the claim that an estoppel is created by the recitals in these bonds is utterly overthrown. The logic of this position is unanswerable: That if recitals create an estoppel because the parties making them are also the ones authorized to determine the conditions precedent, then when the fact is the very reverse, and the parties are *not* the same, no estoppel is created.

THE AUDITOR'S CERTIFICATE OF REGISTRATION.

Does the certificate of the State Auditor upon the bonds estop the township from questioning their validity?

Section 11 of the act under which the bonds were issued provides that "such bonds shall not bear interest or be ne-"gotiable until after the *delivery* and *registration* thereof." Section 14 provides for the registration, and for the certificate of the Auditor of the fact of registration. It is as follows:

"SEC. 14. Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the Auditor of State for registration, and the Auditor shall, upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact that they have been regularly and legally issued, that the signatures thereto are genuine, and that such bonds have been registered in his office according to law; for which registration and certificate the Auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof."

It was, I suppose, perfectly competent for the Legislature to authorize the issuance of bonds which should be originally

non-negotiable, and which should only become negotiable when some prescribed action should be taken or formality observed. The negotiability of these bonds was made to depend upon the fact of delivery and registration.

A mere statement that they were registered does not make them negotiable. No rumor, however well authenticated, will impart the attribute of negotiability to them. The law does not say that the Auditor's certificate shall make them negotiable, but that *registration* shall. The record shows that in *fact* these bonds were never registered in the Auditor's office. The Auditor simply put a false certificate of registration upon the bonds. The law does not state what effect the certificate of the Auditor shall have, but it does say what effect the registration shall have. If this law be compared with the registration laws for real estate which are passed for the purpose of giving notice to subsequent purchasers, it will be found that nothing short of actual registration will charge persons with notice *except, where the statute specially provides that leaving the deed with the register shall be sufficient.* But this statute provides nothing of the kind. It gives no conclusive effect to the Auditor's certificate to bind anybody as against the truth of the record. The township officers had a right to go to the Auditor's office, and finding no bonds recorded there, to rely upon the fact that they were not registered.

So far as judicial powers are attempted to be conferred upon the Auditor, the act was a failure. Conceding the right of the Legislature to vest in him the right to determine questions of fact, it was clearly beyond the competency of the Legislature to vest in him the power to determine conclusively the legality or illegality of the bonds. The Legislature cannot rob the courts of judicial power, and confer it upon a ministerial officer.

It clearly follows, I think, that the bonds not having been registered, are not negotiable, and are open to all defenses. No estoppel against the township is created by the false certificate of the Auditor. He is not in any sense the agent of the township, but of the holder of the bonds, for whom and at whose request he is to register them. They, and not the township officers, are to see that he performs his duty.

IV.

In conclusion, and by way of recapitulation, I claim that the plaintiff below is not entitled to recover, because—

1st, The act under which the bonds were issued confers no power upon municipal corporations to issue bonds for depots and side-tracks.

2d, The bonds are void for excess of time.

3d, No estoppel is created by the recitals of the bond to prevent the township from proving their invalidity. The bonds are not negotiable, because not registered, and the false certificate of the Auditor cannot impose a liability which otherwise would not exist, nor cut off a defense which otherwise would be complete.

GEORGE R. PECK,
Attorney for Plaintiff in Error.

W. N. ALLEN,
HENRY KEELER,
J. B. JOHNSON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1877.

HENRY STRONG,
Plaintiff and Appellee
vs.
THE TOWNSHIP OF ROCK CREEK, JEFFERSON COUNTY, KANSAS,
Defendant and Appellant.

Appeal from the Circuit Court of the United States for the District of Kansas.

POINTS AND ARGUMENT FOR APPELLEE.

H. STRONG,
For Appellee.

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POINTS AND ARGUMENT FOR APPELLEE.

This case, by stipulation of the parties, is submitted upon printed briefs under the rule.

It comes to this Court, after judgment for the appellee, upon certificate of divided opinion by the judges below.

The record shows the suit is upon interest coupons attached to bonds issued by the appellant. The following is a copy of one of the bonds and coupons, and of the certificate of registration, indorsed upon all of the bonds by the auditor of the State of Kansas, with his seal attached:

$1,000.00. **No. 15.**

ROCK CREEK TOWNSHIP RAILROAD AND DEPOT BOND.

State of Kansas, County of Jefferson.

Thirty years from the 15th day of October, 1872, the township of Rock Creek, in the county of Jefferson and State of Kansas, for value received, promises to pay to the Atchison, Topeka and Santa Fe Railroad Company, or bearer, the sum of one thousand dollars in lawful money of the United States, with interest from the said 15th day of October, 1872, at the rate of seven (7) per cent. per annum, payable semi-annually on the 15th days of April and October of each year, upon the presentation and surrender, as they severally become due, of the proper coupons therefor hereto attached. Both principal and interest payable at the Fourth National Bank in the city of New York and State of New York.

This bond is one of a series amounting to the sum of twenty thousand dollars, made and issued to the said Atchison, Topeka and Santa Fe Railroad Company, in payment of a subscription and donation by the said Rock Creek Township to the said Company, in aid of the construction of its railroad depots and side tracks in said township, under and in pursuance of the provisions of an act of the Legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872. And the faith of the said township is hereby pledged for the redemption and payment of said bonds and the interest coupons thereto attached.

In testimony whereof the township trustee and clerk of said Rock Creek township, have hereunto set their

hands as such trustee and clerk, as by law it is provided shall be done, this tenth day of September, 1872.

N. A. LAFOU, Trustee.

Attest, ALBERT OWEN, Clerk.

STATE OF KANSAS—ss.

I,——Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that the same has been registered in my office according to law.

Seal of the Auditor of State, Kansas. Jan. 20th, 1861.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at the city of Topeka, this 17th day of October, A. D. 1872.

A. SHOMAN, Auditor.

$35.00. DUE OCTOBER 15TH, 1900. 35.00.

The township of Rock Creek, Jefferson county, Kansas, will pay to the Atchison, Topeka and Santa Fe Railroad Company or bearer, thirty-five dollars, semi-annually interest on railroad and depot bond, No. 15, payable at Fourth National bank, city of New York, State of New York.

N. A. LAFOU, Trustee.

Attest. A. OWEN, Clerk.

There are three questions raised by the appellant:

1*st*. Does the act of the legislature of the State of Kansas, referred to in said bonds, authorize the issuance of the bonds of a township to aid in the construction of depots and side tracks, as recited in the bonds in suit?

This would seem to require no argument, as obviously the side tracks and depots were a part of the railroad, and without which the road would be of no use, but rather an injury to the town. They are not only "works of internal improvement," specially authorized, but an essential part of every railroad, *without which it would not be a railroad in the legal significance of the term.*

There was a mere track, a partly completed road before, and to aid in the completion of which in this township, so as to make it in any way available by the township, these bonds were issued. The statute does not limit the application of the aid to be given, nor even direct whether it shall be applied to extending the track, or building side tracks and station houses. The road without the side tracks and stations was as useless to the town as if the main track had stopped at the town line.

The country was new and sparsely populated, and the expense of erecting and maintaining numerous side tracks and depots, at short distances from each other, would entail an expense beyond the resources of the railroad company, and wholly unremunerative. The people of the town had a legal right to get the benefit of the road, and to partly indemnify the company for the required outlay *for the purpose of completing the road within the township.*

These side tracks and depots are public property that is subject to legislative control, as much as any other part of the road. They are evidently not a private enterprise, such as is excluded from municipal aid by the rule in the case of the *Bank* v. *Iola*, in U. S. Circuit Court, reported in 9th Ks., 689, and in the case of the *Loan Association* v. *Topeka*, 20 Wall., 661.

The original cost of the depots and side tracks is not a material question, nor the cost of perpetually maintaining them, as the railroad company bound themselves to do. The township was competent to decide the value to it of having a railroad completed within the town. In *Leavenworth* v. *Miller*, 7 Ks. R., 536, the Court say: "The rule is to let the locality say how much the benefit is worth, and, therefore, how much it is willing to be taxed for it. Under such a rule the locality taxed can certainly have no right to complain." *Township of Burlington* v. *Beasly*, 4 Otto, 310.

2*nd*—Are the bonds mentioned in plaintiff's petition

void, for the reason that they are made payable thirty years and thirty-five days from their date of execution thereon written, though only drawing interest for the last thirty years of said time?

The statute of March, 1872, under which the bonds were issued, requires three weeks' notice of the election. The record shows that the order was made for the election July 30. The election was Aug. 27. The contract of the Railroad Company with the township made the delivery of the bonds conditional upon the Railroad Company completing the road for the use of the township by Oct. 15. The town had the right to make the bonds not draw interest until the work was completed, that is, Oct. 15, though it was necessary that the bounds should be made before that time, and placed in the hands of the State Treasurer in escrow, by the township officers, with a copy of the contract with the Railroad Company, "*to be held by the State Treasurer* until the conditions are complied with, when he shall deliver them to the proper parties." This, obviously, could not all be done in one day, or at one date. The town officers must, of necessity, actually execute the bonds before the date of their delivery. *They* were not to hold them pending the progress of the work. The Treasurer of the State, at Topeka, was to hold them, and he was at a great distance, therefore the township officers dated them when they delivered them to the Treasurer, but protected the township by making them draw interest only from the date of completion of the work and delivery of the bonds by the Treasurer. The registration shows they were not delivered to the Railroad Company until Oct. 17th. This is just as the law required, and the date of execution written on the bond is wholly immaterial. The real date of the bond is on its face, Oct. 15, 1872, and for thirty years from *that date* it drew interest, and at thirty years from that date it becomes payable. In other words, it

is a thirty year bond, as the law authorized. See section 11 of Act of March 2, 1872.

3d. Is the appellant estopped by the recitals in said bond from introducing the testimony offered by it *as above stated?*

Now what was the proof appellants proposed to offer, as stated in the stipulation, which the Court held they were estopped from offering by the recitals in the bonds?

1st. That the only election at which the bonds were voted was that held Aug. 27, 1872, at which 102 votes were cast in all, fifty-one for and fifty-one against the bonds, and that one Salem Rice, who was not a qualified elector of that township, voted for the bonds.

2d. That the county officers did not canvass the returns, "nor declared the result to be in favor of issuing any of the bonds of said township, but upon the records of the county the following entry was made prior to the issuance of said bonds: Commissioners' journal, August term, 1872. Friday, August 30, 1872.—At this, a called meeting of the board, there was present H. W. Wellman and P. M. Gilbert. The board proceeded to canvass the vote of Rock Creek Township on the proposition to donate the bonds of said township to the Atchison, Topeka and Sante Fe Railroad Company, and determine the following as a result of said election:

For the issuing of said bonds..... 52 votes.
Against " " ..... 51 "

Total.....103 "

Board adjourn, * * *

W. F. GELLULY, County Clerk.

[SEAL.]

3. "That there never has been in the office of the Auditor of State of Kansas any registration of any bonds of said township, showing that any bonds of said township were issued to aid in the construction of any

railroad or work of railroad improvement * * * but the Auditor's certificate of registration was placed on said bond as the same appears in the copy of the bond set out in plaintiff's petition."

4. That the depot and side tracks mentioned in said bond were, pursuant to said proposition and subscription, located and erected upon and appurtenant to a railroad already built and in operation through said township before and at the time of said election, subscription and issuance of bonds."

I have nothing further to say as to the allegations in number 4 above. They are wholly immaterial.

What, if any, recital does the bond contain? That this bond is issued to the R. R. Co., in payment of a subscription and donation by the Township to the Company, "*in aid of the construction of its railroad depots and side-tracks, in said township, under and in pursuance* of the provisons of an act of the Legislature," &c. [See copy of bond and registration above.] That is, the language is that adopted usually in such obligations, and recites that the township has *pursued* and conformed to the requirements of the Statute in isuing the bonds.

The recitals of the Auditor's certificate upon the bond, are: That "this bond has been regularly and legally issued, that the signatures thereto are genuine, and that the same *has been duly registered in my office according to law.*" The certificate of the court below shows the plaintiff is a *bona fide* holder for value before maturity.

Now, even if it did not appear upon the face of the county records that the vote had been legally taken, canvassed and declared, (as it does appear affirmatively,) beyond all question, the appellant would be estopped by the recital in the bond from proving, that in point of fact of the legal votes cast, there was not a majority for the bonds, and that the recital is untrue.

This principle so eminently just and fair, has been

repeatedly declared by this Court in its broadest application, in identical cases, from *Knox County* v. *Aspinwall* 21 *Howard*, down to the present time.

The purchaser is bound to look for nothing behind the recitals except legislative authority to issue them.

Knox Co. v. *Aspinwall*, 21 How., 544.
Leavenworth County v. *Barns*, 4 Otto, 70.
Moran v. *Miami County*, 2 Black., 732.
Douglass County v. *Bolles*, 4 Otto, 104.
Marcey v. *Town of Oswego*, 2 Otto, 637.
Johnson County v. *January*, 4 Otto, 202.
Mercer County v. *Hackett*, 1 Wall., 83.
Supervisor v. *Schenck*, 5 Wall., 784.

Questions of form merely, or irregularity, or fraud, or misconduct on the part of its agents, cannot be considered to defect the bonds.

Town of East Lincoln v. *Davenport*, 4 Otto, 801.

The recitals are a decision that there was a popular vote and that a majority of the legal voters present voted for the issue of the bonds. The matter has by this passed into judgment. This doctrine has never been overruled to this day.

Town of Coloma v. *Eaves*, 2 Otto, 484.

The act of March 2, 1872, required a vote upon the question of issuing the bonds. It is admitted there was a vote. The statute provided that there must be a majority for the bonds. The bonds recite that they *pursued* or followed or complied with all the provisions of the statute. That is the meaning of the recital, the obvious intent and purpose; otherwise it would be a mere snare and trap. This concludes the appellant, as the purchaser had a right to rely upon the recitals that the bonds were issued in conformity with law.

Town of Venice v. *Murdock*, 2 Otto, 494.
Converse v. *Fort Scott*, 2 Otto, 503.
County of Moulton v. *Rockingham Bank*, 4 Otto, 631.

A municipality in such a case is estopped even from proving a failure to comply with the law as to the length of notice required for the vote upon the bonds.

Humboldt Township v. *Long*, 2 Otto, 642.

The statute required the State treasurer to deliver the bonds to the railroad company after the work was done. For more than a month they were in his hands, and if the bonds were not legally voted, he could have been enjoined from delivering them to the railroad company by any one of the dissenting voters of the township. The township officers could have been enjoined from delivering them to the State treasurer. The bonds did not draw interest until registered, were of no value till registered by auditor of State. The auditor of State might have been enjoined from re-delivering them to the railroad company. The State of Kansas, differing in this respect from Iowa and other States, has been especially careful to prevent fraudulent bonds, or bonds issued before the conditions are complied with, from getting into the hands of innocent holders before the parties in interest could intervene and avert the consummation of a wrong. It requires not only the officers of the town, but also the two principal fiscal officers of the State, to give the bonds currency. They all united in giving these bonds currency. The township officers by issuing them; the county officers by declaring they were legally voted; the treasurer of State, by delivering them to the railroad company; and the auditor of State, by certifying that they had been regularly and legally issued, and duly registered in his office.

The R. R. Co. took them to the auditor's office to be registered, as the Statute requires. He took possession of them and certified that he had registered them. This is all the holder could do; he could not know whether the auditor had in fact entered them on a book, and he was not required to know. I submit that, as against this

objection, the bond would be good even in the hands of the R. R. Co., and would draw interest.

In conclusion, I have only to say that, aside from technichal legal questions, the township is rightfully bound to pay these bonds, having recived, and still receiving, the full and ample consideration and equivalent for their issue, and having, by their every act, given currency to the bonds themselves. The refusal to pay, as the record shows, is a simple, bald and dishonest repudiation by the appellant, of a contract fairly entered into by both the parties to it, and fully performed on the part of the Railroad Company, before they put the bonds upon the market, and before they came into the hands of *bona fide* holders.

H. STRONG,
For Appellee.

Sheet 2. 2 Sheets.

G. E. King.
Fluting Mach.

No. 3000. Reissued Jun. 23. 1868.

Fig 2.

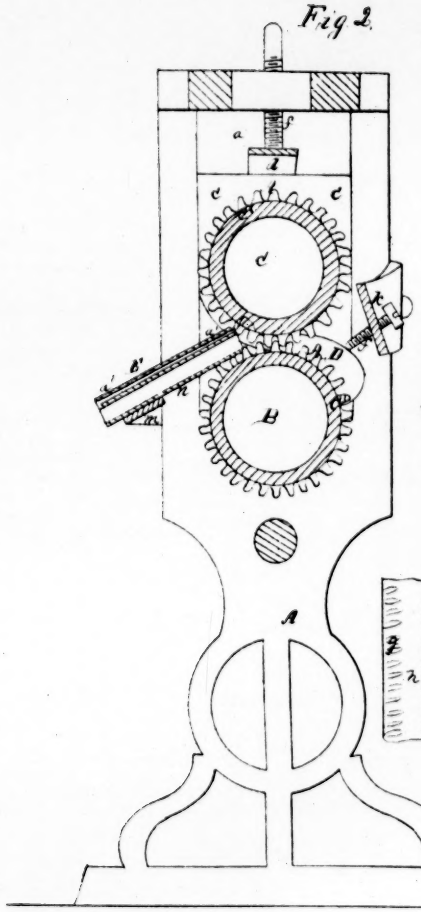


Fig 3.

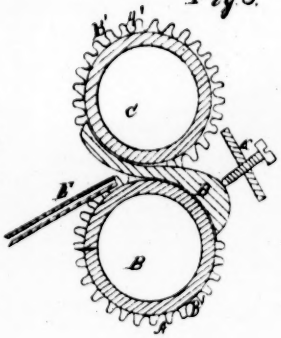


Fig 4.

Inventor.

Witnesses.
A. Sellers
Geo. Keely

Geo. Elmer King

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

G. E. King.

Puffing for Trimming.

Reissued Jun. 23, 1868.

No. 3,001.

Fig. 1.

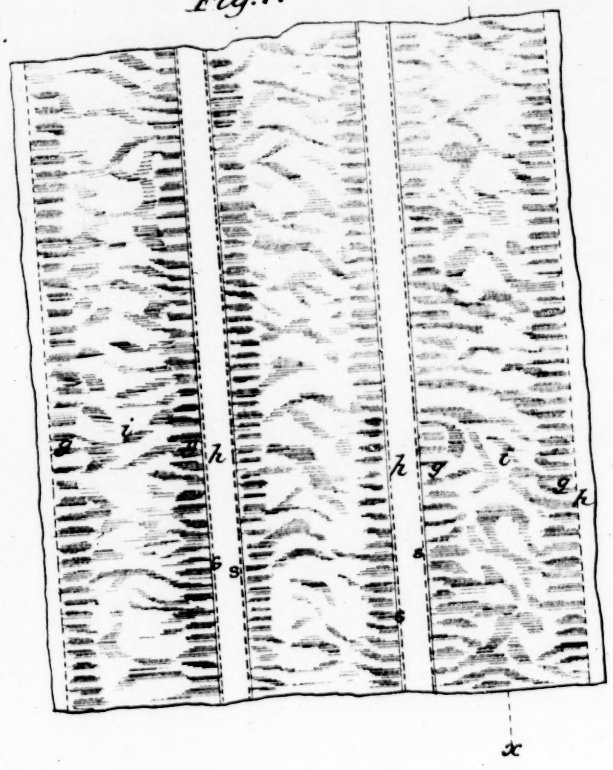


Fig. 2.

Fig. 3.

Witnesses:
A. LeClerc.
E. P. Tracy.

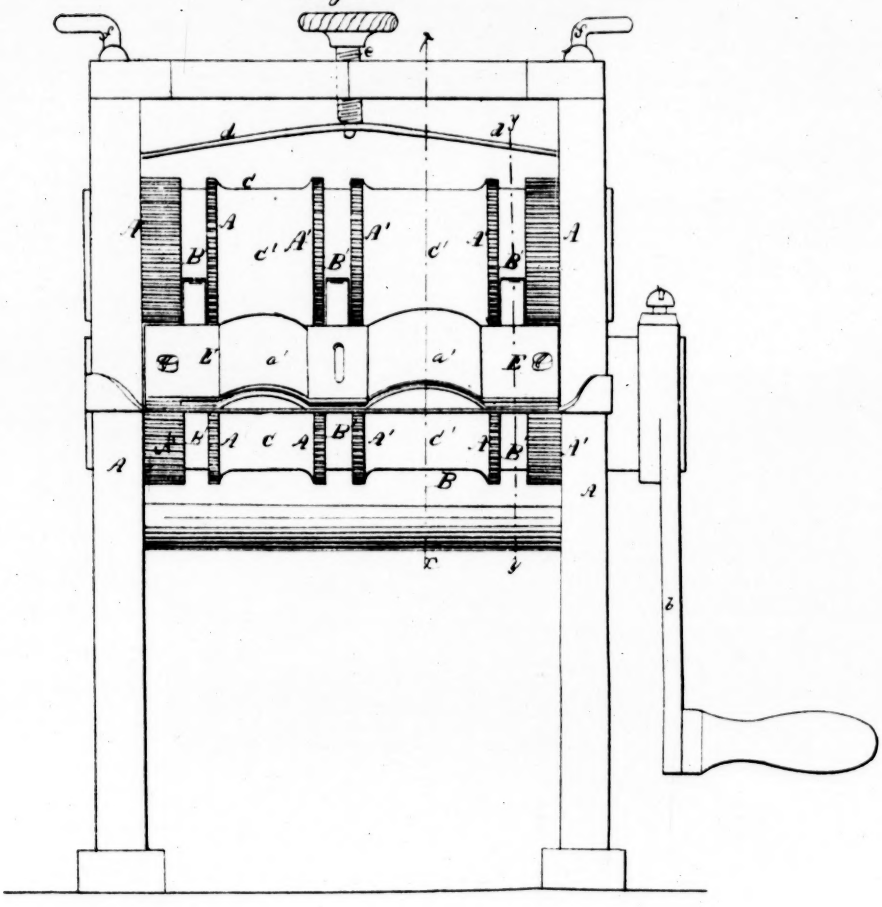
Inventor:
G. E. King.
per Brownell & Brownell
Attys.

Sheet 1 - 2 Sheets.

G. E. King.
Fluting Mach.

No. 3000. Reissued Jun. 23 1868.

Fig 1.



Witnesses.

A. Le Clare
Geo. Reed

Inventor.

Geo Edwin King
per

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

W. WEITLING.

Improvement in Fluting-Machines.

No. 130,962. Patented Aug. 27, 1872.

Fig. 1.

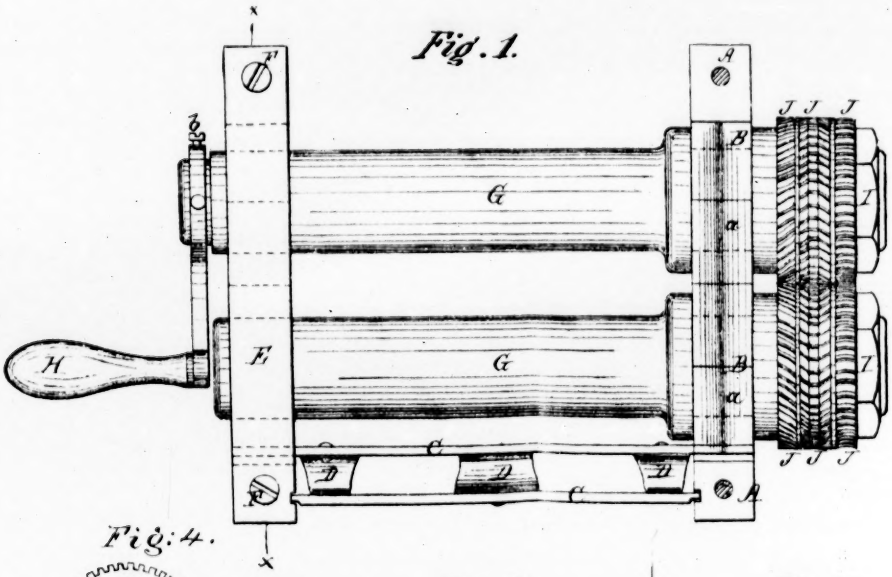


Fig. 4.

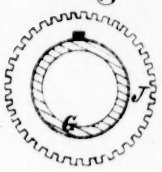


Fig. 2.

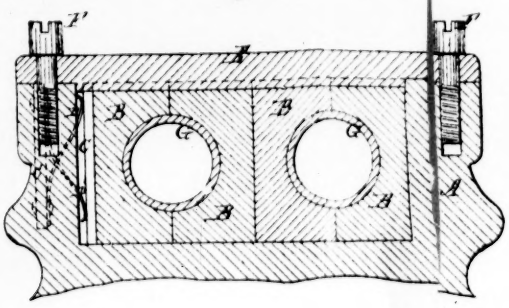
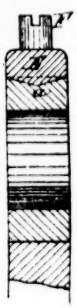


Fig. 3.



Witnesses.

Jno. Howard

Lansing Penin

Inventor.

by his Atty. A. Draw Jr. & Co.

Wm. Weitling

W. Weitling.

Crimping Mach.

Filed Mar. 8. 1855.

Fig: 1.

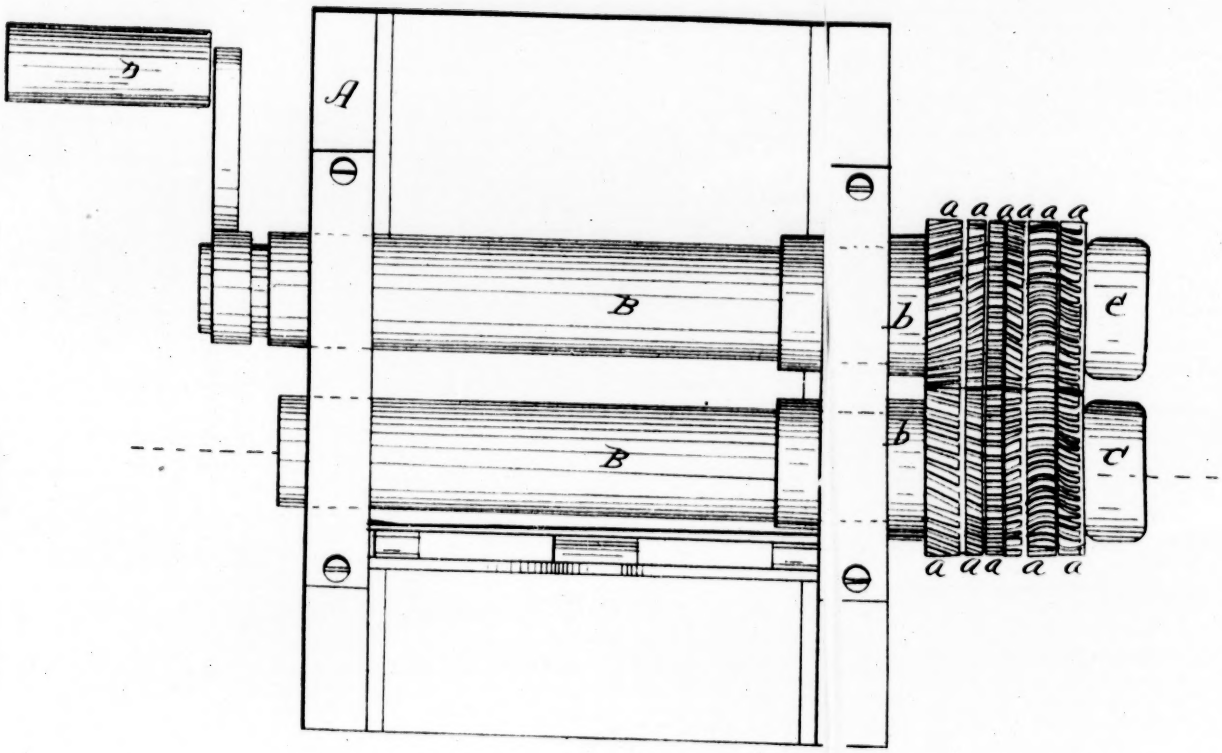
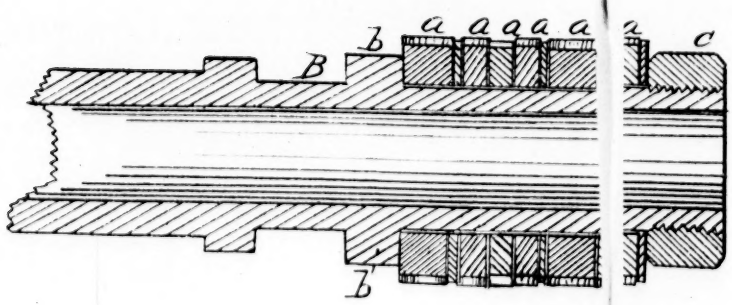


Fig: 2.



N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.